

EXHIBIT L

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 IRVING H. PICARD, TRUSTEE

5 FOR THE LIQUIDATION OF B.

6 vs. CASE NO. 11-02149-cgm

7 BANQUE SYZ & CO., S.A.

8 - - - - - x

9 IRVING H. PICARD, TRUSTEE

10 FOR THE LIQUIDATION OF B.

11 vs. CASE NO. 12-01205-cgm

12 MULTI-STRATEGY FUND LIMITED

13 - - - - - x

14

15 U.S. Bankruptcy Court

16 One Bowling Green

17 New York, New York 10004

18

19 May 18, 2022

20 10:01 AM

21 B E F O R E :

22 HON. CECELIA G. MORRIS

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: Unknown

1 Adversary Proceeding 11-02149-cgm, Irving H. Picard, Trustee
2 for the Liquidation of B vs. Banque XYZ & Co., SA
3 RE: Doc #148 Notice of Adjournment of Hearing RE: Pre-Trial
4 Conference Hearing not Held and Adjourned to 5/18/22 at 10
5 a.m. at Videoconference (ZoomGov) (CGM).

6
7 RE: Doc #149 Motion to Dismiss Case/Motion and Notice of
8 Motion of Defendant Banque Syz SAs Motion to Dismiss the
9 Complaint (related document(s) 147, 1) filed by Richard B.
10 Levin on behalf of Banque SYZ & Co., SA with hearing to be
11 held on 5/18/22 at 10 a.m. at Videoconference (ZoomGov)
12 (CGM) Responses due by 3/29/22

13
14 RE: Doc #153 Opposition/Trustee's memorandum of Law in
15 Opposition to Defendant Banque Syz SA's Motion to Dismiss
16 (related document(s) 149) filed by Nicholas Cremona on behalf
17 of Irving H. Picard, Trustee for the Liquidation of Bernie
18 L. Madoff Investment Securities LLC and Bernard L. Madoff

19
20 RE: Doc #156 Reply to Motion/Banque Syz SA's Reply to the
21 Trustee's Memorandum in Opposition to Banque Sys's Motion to
22 Dismiss the Complaint (related document(s) 149) filed by
23 Richard B. Levin on behalf of Banque SYZ & Co., SA.

24
25

1 Adversary proceeding: 12-01205-cgm; Irving H. Picard,
2 Trustee for the Liquidation of B v. Multi-Strategy Fund
3 Limited

4 RE: Doc #91 Motion to Dismiss Adversary Proceeding (related
5 document(s) 1) filed by Robert J. Lack on behalf of Multi-
6 Strategy Fund Limited with hearing to be held on 5/18/22 at
7 10 a.m. at Videoconference (ZoomGov) (CGM)

8
9 RE: Doc #99 Motion to Dismiss Adversary Proceeding Notice
10 of Motion to Dismiss the Amended Complaint (related
11 document(s) 97) filed by Robert J. Lack on behalf of Multi-
12 Strategy Fund Limited with hearing to be held on 5/18/22 at
13 10:00 a.m. at Videoconference (ZoomGov) (CGM)

14
15 RE: Doc #108 Opposition/Trustee's memorandum of Law in
16 Opposition to Defendant Multi-Strategy Fund Limited's Motion
17 to Dismiss (related document(s) 99) filed by David J. Sheehan
18 on behalf of Irving H. Picard, Trustee for the Liquidation
19 of Bernard L. Madoff Investment Securities LLC

20
21 RE: Doc #110 Reply Memorandum of Law of Defendant Multi-
22 Strategy Fund Limited in Support of its Motion to Dismiss
23 the Amended Complaint (related document(s) 99) filed by
24 Robert J. Lack on behalf of Multi-Strategy Fund Limited.
25 Transcribed by: Sheila Orms

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1 These contacts directly relate to Multi-Strategy Fund's
2 redemption and their receipt of more than \$25 million of
3 stolen customer property. They therefore relate to the
4 Trustee's claim to recover that money for the benefit of the
5 estate.

6 Unless Your Honor has any questions, I'll turn it
7 over for rebuttal unless Mr. Feil has something to add.

8 MR. FEIL: Your Honor, I just wanted to address
9 your question about Kingate. You're right, we do cite the
10 Kingate at the beginning of our complaint and that's just --

11 THE COURT: (indiscernible)

12 MR. FEIL: I'm sorry, that's just to note that the
13 defendant also received transfers from Kingate, that the
14 Trustee had dropped those claims because he reached a full
15 recovery in the settlement with Kingate.

16 THE COURT: Okay. Thank you.

17 MR. FEIL: You're welcome.

18 THE COURT: Okay. I have a couple of questions,
19 Mr. Lack, this is your question.

20 MR. LACK: Yes.

21 THE COURT: In Case 109 -- excuse me 09-01239 in
22 the Corina Piedrahita case, knowledge was relevant because
23 that was an initial transfer. And for -- in Fairfield and
24 good faith prior to the Second Circuit's agenda, it's not
25 relevant for the subsequent transfer, and for the safe

1 harbor defense. I want you to talk to me about that,
2 because that's my opinion.

3 MR. LACK: Right, exactly, Your Honor. And it is
4 true --

5 THE COURT: Initial as subsequent, talk to me.

6 MR. LACK: Yes, absolutely.

7 It is certainly true, Your Honor, that you looked
8 at the knowledge of Ms. Piedrahita and other officers and
9 agents of Fairfield Funds --

10 THE COURT: Right.

11 MR. LACK: -- in order to determine whether their
12 knowledge could be imputed to Fairfield as an initial
13 transferee. And you found that in fact, not with respect to
14 Ms. Piedrahita, but with respect to all the other
15 individuals who were officers and agents. You found that
16 they did have, they were adequately alleged to have known
17 that Madoff was not trading securities. Their knowledge
18 could be imputed to the Fairfield Funds, therefore,
19 Fairfield Funds had actual knowledge and they could not
20 invoke the safe harbor as initial transferee.

21 But if the Trustee's theory had been correct, you
22 would have stopped there and say, well now that I've found
23 that the initial transferee Fairfield Sentry and other
24 Fairfield Funds cannot invoke the safe harbor, that disposes
25 of all the subsequent transfer claims because they can't

1 invoke the safe harbor either.

2 But you didn't do that, you dismissed the
3 subsequent transfer claims against Ms. Piedrahita. And the
4 only basis we submit you could have done that on was Section
5 546(e). And the reason we say that is because with respect
6 to the good faith defense, it was also asserted by the
7 subsequent transferees, you held that because the defendants
8 had the burden of proving value as an element of the good
9 faith defense, that you could not address the good faith
10 defense on a motion to dismiss.

11 And therefore, the only basis we submit this Court
12 could have had to dismiss the claim, subsequent transfer
13 claim that Ms. Piedrahita is 546(e).

14 Now, Mr. Feil noted that there were some
15 transfers, subsequent transfers to Ms. Piedrahita within two
16 years of the petition date. And he asked well how could
17 they have been under 546(e).

18 There may be a question as to those transfers,
19 Your Honor, but there were other transfers that were beyond
20 the two year period. And as to those, we submit, the only
21 basis on which this Court could have dismissed the
22 subsequent transfers against Ms. Piedrahita was 546(e). And
23 therefore, to be consistent with Your Honor's decision in
24 Fairfield Investment Fund, which we think was correct
25 because Ms. Piedrahita did not have actual knowledge

1 alleged. She should not have been deprived of the safe
2 harbor. To be consistent with Your Honor's decision in
3 Fairfield Investment Fund, to be consistent with Cohmad, you
4 should dismiss the claim against Fairfield -- against Multi-
5 Strategy Fund.

6 THE COURT: I think you're misreading it. That's
7 not correct. I dismissed on good faith. So okay.

8 MR. LACK: Well --

9 THE COURT: Anything else you wish to rebut? I've
10 heard you. Anything else you wish --

11 MR. LACK: Okay. Let me go back and -- because --
12 let me go back to the basic argument that Mr. Feil made. He
13 says basically that Multi-Strategy as a subsequent
14 transferee, under Cohmad steps into the shoes of the initial
15 transferee. That is not correct. Okay. It's not correct
16 as a statutory basis, it's not correct under Cohmad.

17 Section 546(e) and Section 550(a) refer to
18 avoidability of the transfer, not the liability of the
19 transferee. 550(a) does not say if the initial transferee
20 is liable, then the subsequent transferee is also liable.

21 And the finding -- determining factor in Cohmad
22 was the actual knowledge of the transferee who was being
23 sought to be recovered against as the defendant.

24 Now, Judge Rakoff clearly did not hold that the
25 ability of the subsequent transferee to invoke the safe